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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Vince Chhabria, Judge

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
VS.)	NO. C 17-00103-4 VC
)	
KARIM BARATOV, et al.,)	
)	
Defendant.)	
)	

San Francisco, California
Tuesday, April 24, 2018

TRANSCRIPT OF PROCEEDINGS

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Tuesday - April 24, 2018

10:58 a.m.

P R O C E E D I N G S

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THE CLERK: Counsel in the Baratov matter can step forward, and I will call the case when he is present in court. Calling Case Number 17-CR-00103, USA versus Karim Baratov. Counsel, please state your appearances for the Record.

MR. MANCILLA: Good morning, Your Honor.

THE WITNESS: Andrew Mancilla, colleague Robert Fantone.

THE DEFENDANT: Good morning.

MR. SHIH: Good morning, Your Honor. Jeff Shih, United States. With me here is also Scott McCulloch, from the Department of Justice National Security Division.

MR. MC CULLOCH: Good morning.

MS. LIBBY: Good morning, Your Honor. Emily Libby, with the Probation Office.

THE COURT: Good morning. Okay. So if I could start with -- I guess it's Mr. McCullough. Are you presenting today?

MR. MC CULLOCH: Yes, Your Honor.

THE COURT: So let me start with you. I have a couple of concerns about this case and this sentencing, and they're related concerns. The first is that it seems as if an impression has developed that Mr. Baratov is the Yahoo! mega-hacker. He is not the Yahoo! mega-hacker. Correct?

1 **MR. MC CULLOCH:** Correct, Your Honor.

2 **THE COURT:** Okay. So one concern I have is that the
3 sentence that the Government is requesting for Mr. Baratov --
4 it relates to the fact that he's been caught up with a
5 co-defendant, who apparently was the Yahoo! mega-hacker.
6 That's one concern I have.

7 The related concern that I have is that -- and just to be
8 clear, according to the Government, Mr. Baratov not only was
9 not the Yahoo! mega-hacker, but did not have any involvement in
10 the conspiracy to conduct the Yahoo! mega-hack. Correct?

11 **MR. MC CULLOCH:** He was involved with the conspiracy,
12 Your Honor, with -- in the sense that he was taking the fruits
13 of the Yahoo! hack, and basically working for the same people
14 who were hacking Yahoo! in order to accomplish the goals of the
15 conspiracy.

16 **THE COURT:** Right. He had a client. He had a
17 client?

18 **MR. MC CULLOCH:** He had a client.

19 **THE COURT:** And the client was involved in the Yahoo!
20 mega-hack, according to you; but Mr. Baratov, himself, was not
21 involved in the Yahoo! mega-hack. So what you're saying is
22 that somebody who was involved in the Yahoo! mega-hack paid
23 Mr. Baratov money to do some other hacking job? Is that what
24 you're saying?

25 **MR. MC CULLOCH:** Correct, Your Honor.

1 **THE COURT:** And you're saying that that's the way in
2 which he was involved in the Yahoo! mega-hack?

3 **MR. MC CULLOCH:** Yes.

4 **THE COURT:** So in other words, he was not involved in
5 the Yahoo! mega-hack. Correct?

6 **MR. MC CULLOCH:** Exactly. We're not saying he was in
7 Yahoo!, stealing things from Yahoo!. We're not saying that.

8 **THE COURT:** Okay.

9 **MR. MC CULLOCH:** We're also not arguing that plays up
10 his Sentencing Guidelines in this case, either.

11 **THE COURT:** Okay. I understand.

12 So the other concern I have is that the Defense identified
13 these three cases where hackers were sentenced. Right? And
14 they received significantly lower sentences than you are asking
15 for Mr. Baratov, and they received significantly lower
16 sentences than Mr. Baratov is asking for himself. Right?

17 **MR. MC CULLOCH:** Correct, Your Honor.

18 **THE COURT:** And it strikes me that in the universe of
19 hacking crimes, Mr. Baratov's criminal activity was quite
20 serious. I mean, I think all hacking is serious, but
21 Mr. Baratov's conduct falls on the serious side of the range.

22 **MR. MC CULLOCH:** Mm-hm.

23 **THE COURT:** And therefore, he likely deserves to be
24 given a more severe sentence than your typical hacker; but on
25 the question of how much more severe, I'm not satisfied with

1 the Government's presentation.

2 When I read Mr. Baratov's Sentencing Memo, and saw that
3 Mr. Baratov pointed to these other three cases where hackers
4 were sentenced to something much lower than what the Government
5 is seeking for Mr. Baratov, I was expecting the Government to
6 come back and say, *No, no, no. This is -- you know, the*
7 *sentence that we're seeking is within the range of normal for*
8 *somebody who committed crimes like this. And here some other*
9 *examples. Here's a guy from New Jersey who got sentenced to 10*
10 *years for committing similar crimes. Here's a guy from Florida*
11 *who got sentenced in Federal Court to eight years for*
12 *committing similar crimes.*

13 I didn't get anything like that from you. And so I am not
14 sure that I feel equipped to make a fully informed decision
15 right now on the appropriate sentence for Mr. Baratov.

16 You know, in a drug case or a felon in possession of
17 firearms, I mean, we sentence people for those crimes all of
18 the time. And so we judges have a very good sense of what, you
19 know -- whether a proposed sentence falls within the range.

20 It's not often that we sentence somebody for crimes like
21 this. And I think that I need a better education, perhaps from
22 both sides and from the Probation Office, on where this
23 proposed sentence falls within the range of sentences that
24 hackers are getting around the country in Federal Court for
25 similar crimes.

1 And, in other words, I'm concerned that the sentence the
2 Government has proposed may result in an unwarranted sentencing
3 disparity at the expense of Mr. Baratov, and that it may
4 somehow be related to the fact that this case is generating
5 headlines about the Yahoo! hack and about Russians. Right? So
6 I think I need more from the Government. I don't think I would
7 be comfortable handing down the kind of sentence that the
8 Government is requesting, without receiving a stronger
9 justification from the Government for it.

10 **MR. MC CULLOCH:** Okay.

11 **THE COURT:** I'm not sure I'll ever be comfortable,
12 but I certainly am not now.

13 **MR. MC CULLOCH:** Of course, to your first question, I
14 should point out that Mr. Shih and I will cover a few things to
15 Your Honor's questions; but on this point, you know, that's --
16 you're correct that this is the kind of case that the courts
17 don't see very often. This is not something like a narcotics
18 case, where you can point to huge numbers of cases, sort of
19 array them on a spectrum, and figure out where exactly in that
20 spectrum the defendant falls.

21 **THE COURT:** What can you tell me now about the number
22 of similar cases that are out there; over the last ten years,
23 the number of sort of similar hacking offenses, and what the
24 sentences were for those offenses?

25 **MR. MC CULLOCH:** So it's hard to give you. And I

1 don't have a number, is the answer. I don't have something
2 where I can tell you -- say, *This is the number over the last*
3 *ten years.*

4 There aren't huge numbers. And obviously every case --

5 **THE COURT:** I'm sorry. They are not huge numbers?

6 **MR. MC CULLOCH:** There are not huge numbers of cases
7 that have been sentenced.

8 And when they're sentenced, the harm is often different in
9 these different kinds of cases. So looking to that for
10 guidance is going to be difficult anyway.

11 I mean, the vast majority of the cases, as I understand
12 them, are sentenced under 2B1.1 for hacking cases are --
13 they're credit-card-related cases, or people think it's a point
14 of sale, or wherever else they're getting these credit-card
15 numbers. They're turning around and selling them. It's sort
16 of like a more classic economic loss under 2B1.1.

17 I mean, the point that the cases the Defense points to or
18 that the Government points to, as well, stand for -- is that
19 courts have generally looked to the Guidelines in the same way
20 that they do for 2B1.1 check cases in general, understanding
21 that when it comes to a case like this, you're not dealing with
22 the same kind of 2B1.1 issues that might be -- that some courts
23 have had raised or have been challenged by in terms of: Is
24 there a connection between loss amounts and, you know, criminal
25 culpability in the way that the Court can extrapolate to what

1 the appropriate sentence is under 3553(a)?

2 Here, the Court can sort of benefit from the fact that we
3 know the amount of harm to the victim caused. You know, we
4 have guidance from 2B1.1 as to how historic thinking about
5 that, in terms of trying to put a proxy on that harm, and work
6 with the Guidelines in a way that's actually meaningful, and
7 gives the Court some sense for, you know, where the Sentencing
8 Commission thought that people committing these kinds of
9 crimes, you know, ought to wind up when it comes to the actual
10 sentencing table.

11 And then we have enough information, understanding what
12 the defendant's own sort of state of mind is from his
13 statements, from his own papers, and from the proffer that he
14 conducted with the Government; what he was trying to do when he
15 looked at these requests that were coming in from his client;
16 whether he was concerned or not concerned with the harm that he
17 was causing to the victims on behalf of the criminals that were
18 specifically targeting them, asking him, saying, *Look. I want*
19 *this person's -- I want access to this person's e-mail account,*
20 *everything else that goes with that, from the account to every*
21 *other account and part of their life that that gets you into;*
22 not from some random person, which is what almost all of the
23 other cases that we'd be able to point you to would look like,
24 you know, where you have bulk activity, where people go in, and
25 they steal every credit-card number they can find, and they

1 turn around and resell it; or they steal access to a large
2 database of a company. They get in and steal every e-mail
3 account. They turn around and sell it on some kind of a
4 criminal market.

5 What we have here is really something much more nefarious
6 than that. And I don't think you're going to find any cases
7 out there --

8 **THE COURT:** Okay. So let's --

9 **MR. MC CULLOCH:** There's none quite like this.

10 **THE COURT:** Wait. Let me make sure I understand.
11 You're saying it's more nefarious than hacking into a company,
12 stealing everybody's personal information, and then selling
13 that on the market?

14 **MR. MC CULLOCH:** Correct, Your Honor.

15 **THE COURT:** This is more nefarious than that?

16 **MR. MC CULLOCH:** I think it is.

17 **THE COURT:** Okay. How?

18 **MR. MC CULLOCH:** Because -- the difference really is
19 with -- those resale cases, where a criminal basically gets
20 access to something that they're not supposed to have access
21 to, and turns around, and resells it, there is not the same
22 understanding of targeted harm towards the victim.

23 **THE COURT:** Well, you're turning around and selling
24 it. And presumably, in turning around and selling it, you can
25 assume that there will be targeted harm towards victims.

1 **MR. MC CULLOCH:** I'm not at all arguing that's not
2 serious and not nefarious in its own right.

3 The difference here is that it's not a bulk sale, and
4 you're not taking huge numbers of whatever you happen to get
5 access to, and sort of trying to profit from it. Somehow
6 somebody might pay for it. Who knows what portion of those
7 actual victims would ultimately be targeted; what use that
8 would be put to?

9 Here, every single request that comes in from
10 Mr. Baratov's clients is, *I want access to this person; this,*
11 *you know, specified individual account.*

12 I'm not aware of any other case where someone has dealt
13 with something like that, and the kind of lack of care as to
14 the harm that results to people that he knows are being
15 targeted specifically. So, you know, we could sort of canvass
16 the relatively small universe of cases that are out there to
17 look to, but nothing is going to give the Court the guidance
18 that I think you're looking for.

19 **THE COURT:** Even that would be helpful. I mean, if
20 you -- you know, people who have been sentenced --

21 We can have an argument about how much more serious this
22 conduct is than stealing a bunch of personal information of,
23 you know, 10,000 people from a company, and then turning around
24 and selling it --

25 **MR. MC CULLOCH:** Mm-hm.

1 **THE COURT:** -- so that 10,000 people's personal
2 information could be specifically targeted by people who are
3 interested in it. We could have that discussion, but I feel
4 like you haven't laid the groundwork for that discussion yet by
5 responding in a meaningful way to the Defense's assertion that
6 the sentence you're seeking, you know, for Mr. Baratov is way
7 out of whack compared to most hackers. And so I feel like
8 we're not ready even to have that discussion, without getting
9 that from you.

10 Another question I had is, you know, you talk about, you
11 know, the number of victims in this case.

12 And, you know, I think it sound like it's undisputed that
13 the vast majority of victims that we're looking at for purposes
14 of the Guideline calculation were people who live in Russia who
15 were victimized by somebody who was in Canada. And so another
16 question I have is, you know, *How does that affect the analysis*
17 *here?*

18 Is there anything legally inappropriate about including
19 that, you know, in the Guideline calculations; including losses
20 attributed to those people in Guideline calculations?

21 **MR. MC CULLOCH:** There is not, Your Honor. And, you
22 know, we would highlight -- I understand that's the argument
23 that the Defense makes.

24 **THE COURT:** Well, they actually didn't make that
25 argument. They didn't -- I mean, I'm --

1 **MR. MC CULLOCH:** It's implicit in the statements.
2 Exactly.

3 **THE COURT:** Yeah. I mean, it sort of bubbles under
4 the surface --

5 **MR. MC CULLOCH:** Yes.

6 **THE COURT:** -- of their brief, but I'm asking if
7 there's any actual, like, legal proscription on considering
8 that loss by those people.

9 **MR. MC CULLOCH:** There is not. You know, we looked
10 when we saw that. And I think that's why it sort of bubbles
11 under the surface, rather than being argued explicitly.

12 I mean, the flip side of that, as well, is we don't know
13 that all of these victims were in Russia. Obviously, some
14 couple thousand of them were clients of US ISPs, which is a
15 significant harm to the United States, in and of itself.
16 People speak Russian in the United States. We know that many
17 of the victims, beyond the actual Russian speakers, were
18 actually in the United States, and targeted by the FSB for that
19 reason.

20 You know, the other point is this is -- we don't want to
21 be in a position where we're basically doing the same thing
22 that the FSB is doing, and sort of counting harm outside of the
23 country as something not really of great concern, and
24 therefore, it's fine to hire these people to protect them.
25 They can go hack anywhere else in the world, as long as you

1 don't hack in the United States, as long as they sort of don't
2 play around in Russia.

3 That is just not something that we do. So, you know, we
4 treat all of this as very serious.

5 And, you know, as to the specific question of whether it's
6 legally inappropriate -- it is not. And the statute, as
7 Mr. Shih is pointing out, is extraterritorial explicitly, by
8 Act of Congress; but also it, you know, asks a sort of softer
9 question as to whether it ought to weigh into the Court's
10 calculation of an appropriate sentence. The answer to that is
11 no, as well.

12 **THE COURT:** Okay.

13 **MR. MC CULLOCH:** Just to address your other point, if
14 it's okay, before you move on, on whether the Yahoo! hackers
15 were playing into the difficulty in assigning an appropriate
16 level of culpability under the Guidelines --

17 **THE COURT:** Sure.

18 **MR. MC CULLOCH:** You know, it is not in this case.
19 You know, Mr. Baratov's codefendants were charged with economic
20 espionage, you know. He was not.

21 You know, they were -- were they here, assigned with, you
22 know, vastly higher loss amounts and Guideline ranges based on
23 their participation directly in the Yahoo! hack, which he is
24 not being assigned --

25 The only thing that Mr. Baratov is facing before the Court

1 today is, you know, in terms of his Guideline calculation, the
2 specific harm that he caused to his own victims, and the manner
3 that he went about it.

4 So there's no cross-pollination between, you know, what he
5 did at Yahoo!, and sort of the challenge before the Court of
6 appropriately assigning culpability, and of the sentence
7 effective under 3553(a). All we're looking at here, when you
8 look at the Guideline range, is: What exactly did Mr. Baratov
9 do; and how did he do it; who did he do it to; and how many
10 people? That's where the Guideline Range comes from.

11 And the cases that decide it --

12 **THE COURT:** And just, if I remember correctly,
13 nobody's -- nobody's disputing what the Guideline Range is in
14 this case. Right?

15 **MR. MC CULLOCH:** Correct, Your Honor.

16 **THE COURT:** I mean, both sides agree on what the
17 appropriate guideline calculation is. Right?

18 **MR. MC CULLOCH:** And Probation, as well, Your Honor.
19 Yes.

20 **THE COURT:** So the real question is whether the
21 sentence that the Government is seeking is greater than
22 necessary to serve the purposes of the sentencing statute.

23 **MR. MC CULLOCH:** Correct.

24 **THE COURT:** And part of that is looking at whether
25 there's an unwarranted sentencing disparity here. And so

1 that's the issue I'm concerned about.

2 And, you know, I mean, if you want to proceed with
3 sentencing now, you know, I'm fine with that; but you know, as
4 I said, I'm not comfortable with the Governments' proposed term
5 of custody, without getting more information on how other
6 somewhat similarly situated defendants are being sentenced
7 around the country. So do you want to submit further briefing
8 on that, and continue the sentencing hearing?

9 (Discussion off the record.)

10 **MR. MC CULLOCH:** So, I mean, the concern from the
11 Government, Your Honor, is that it's -- we're certainly not
12 hiding the ball, in terms of knowing some very useful case for
13 the Court, and not providing it. I know that's not what you're
14 suggesting. It's just that, looking at the facts of this case,
15 you know, if we had seen other cases that we thought were, you
16 know, informative in terms of the appropriate sentence, we
17 would have proposed them to the Court as another guidepost to
18 look at. If there are other cases that are out there on that
19 point --

20 **THE COURT:** Well, but you just made reference to
21 cases where somebody hacks into a company, steals a bunch of
22 data, and cells it in bulk to -- you know, on a criminal
23 market.

24 **MR. MC CULLOCH:** Mm-hm.

25 **THE COURT:** You didn't talk about any of those cases

1 in your brief.

2 **MR. MC CULLOCH:** We talked about a couple of them,
3 Your Honor -- the Massachusetts case, and the *Seleznev*
4 matter -- both of which were cited in the Government's Response
5 to the Sentencing Memo. Those are both credit-card-fraud cases
6 of a similar nature, where you're operating under Guideline
7 2B1.1 with sort of the application --

8 **THE COURT:** What were the sentences in those? What
9 was the defendant sentenced to in those cases?

10 **MR. MC CULLOCH:** In the first, 20 years. And in the
11 second, 27 years.

12 **THE COURT:** Okay. And where is that in your brief?

13 **MR. MC CULLOCH:** It's in the response to the
14 disparity issue that the Court was addressing, which is
15 footnote 7 in the Response. It's on page 6, Your Honor.

16 **THE COURT:** Footnote 7. That might be why I didn't
17 see those cases.

18 (Laughter in the courtroom.)

19 **MR. MC CULLOCH:** And just -- Your Honor, just to make
20 the one other point, we're not suggesting, as we note here in
21 the footnote, that those are the appropriate guideposts for
22 Mr. Baratov, because the defendants in those matters harmed far
23 more victims that he did, which is why the Guideline ranges
24 went up where they did. They really stand for the proposition,
25 as to do all three cases that the defendant cites, that where

1 courts have tried to figure out how do you weigh harm to
2 victims into the Guidelines to come up with an appropriate
3 sentence, that the best rubric is the policy determination in
4 the Sentencing Guidelines, which is deciding the proxy value of
5 \$500 per accessed account.

6 And sort of getting to a place in the guidelines where you
7 look at that, and sort of have that stand in for the harm to
8 the victims, although we would submit that in this case that
9 really understates the harm, especially where you have this
10 much broader access to victims' lives, and it's being
11 specifically targeted by a criminal that wants that
12 information, rather than these sort of bulk card cases.

13 But they really -- all of the cases -- the couple that
14 we've cited, as well as a few that the Defense stands for -- in
15 none of those cases did the Court, you know, just totally throw
16 out the Guidelines and say, *Look. We don't know what to do*
17 *with these Guidelines here.*

18 **THE COURT:** Right. You have a discussion about
19 whether to use the Guidelines or not. And you talk about --
20 you say that we shouldn't use the shadow guidelines.

21 Let me just ask you now. Do you want to take a shot at,
22 like, doing a canvassing of cases that are arguably similar or
23 somewhat similar, to give me a better sense of the ranges that
24 people get -- the sentencing range that people get for crimes
25 like this; or do you want to proceed now?

1 (Discussion off the record.)

2 **MR. MC CULLOCH:** No. I mean, the other cases that
3 we've seen have all had aspects to them that just made them
4 difficult to weigh in; cooperative defendants cooperating, or
5 there's just something about them that made them seem not
6 useful. So --

7 **THE COURT:** Okay.

8 **MR. MC CULLOCH:** -- you know, if the Court directs
9 us, obviously, we'll do whatever the Court asks.

10 **THE COURT:** Well, but so what you're saying is you've
11 taken your best shot at --

12 The defendants have made that argument that the sentence
13 that you are proposing would create unwarranted sentencing
14 disparity, because somewhat similar offenders have been
15 sentenced to much lower terms.

16 And what you're saying is you've taken your best shot at
17 responding to that? You don't have anything more that you want
18 to submit on that?

19 **MR. MC CULLOCH:** I mean, the only --

20 **THE COURT:** You would rather proceed with the
21 sentencing today?

22 **MR. MC CULLOCH:** I mean, if the Court is of the view
23 that the defendants in those cases that the defendant points to
24 here are similar, then it may be that we need to brief that
25 further. I mean, our view would be the only way in which

1 they're similar is that they were all hackers, you know; but
2 the similarity basically ends there.

3 You had one who hacked something like 30 accounts, and it
4 was sort of for kicks, rather than to really do anything more
5 nefarious to the victims.

6 You have one that hacked about 158 counts.

7 One -- I think it was 50 -- I'm sorry.

8 600 was the last one.

9 You have no one who caused this sort of widespread harm
10 that the defendant did, or in that same nefarious manner that
11 we discussed.

12 **THE COURT:** I mean, one of the defendants was doing
13 it for sexual gratification.

14 **MR. MC CULLOCH:** Exactly, Your Honor.

15 **THE COURT:** And, I mean, that sounds like a pretty
16 significant harm to me, if you're hacking into people's
17 accounts to -- you know, for sexual gratification.

18 **MR. MC CULLOUGH:** Absolutely, Your Honor.

19 And, I think, stole some naked pictures from some people.
20 There are other aspects that were very disturbing.

21 I mean, the point that we would make is that that's one --
22 one of the things that Mr. Baratov claims may have been done to
23 his victims. Who knows? I mean, he didn't ask. There was no
24 attempt to mitigate that harm. We know there was not sort of
25 random access; but rather, you know, specifically targeted. So

1 it could have been -- that could have been much worse. You
2 know, there's just no way to know precisely.

3 **THE COURT:** Okay. Well, what I'm going to do -- I
4 mean, I don't -- you know, I'm not sure I'm going to get
5 anything very helpful from the Government, in light of this
6 discussion, but at a minimum I'm going to continue the
7 sentencing hearing so that I can conduct my own further
8 investigation of it, and ask Probation to conduct a further
9 investigation of, you know, where the Government's proposed
10 sentence falls in the range of sentences that, you know,
11 somewhat similar criminal conduct receives.

12 And if the parties want to file further briefs on that,
13 they can, although it sounds like the Government's not
14 particularly interested in doing so. So maybe I'll just get my
15 information from the Probation Office.

16 **MR. MC CULLOCH:** Your Honor, if it's helpful to the
17 Court, absolutely we'll file whatever's out there, so that the
18 Court can look for it and decide for itself whether those are
19 helpful data points.

20 **THE COURT:** Okay. So I'm going to ask the Government
21 to give me a fuller assessment of the cases out there where
22 hackers have been sentenced in Federal Court; and where this
23 falls in the range -- where its proposed sentence falls in the
24 range compared to those other cases. And I'll ask the
25 Government to file a brief within 14 days.

1 **MR. MC CULLOCH:** Yes, Your Honor.

2 **THE COURT:** And the defendant can respond within 21
3 days? I'll give the defendant an additional 14 days after the
4 Government files its Supplemental Sentencing Memorandum.

5 **MR. FANTONE:** Okay.

6 **THE COURT:** And in the meantime, I'll ask Probation
7 to maybe get in touch with the Sentencing Commission, and see
8 if Probation can get some data from the Sentencing Commission.
9 If we get anything meaningful, I'll share it with you all.

10 And we'll have a further sentencing hearing in -- I don't
11 know -- six weeks, or two months, or something like that.

12 Is that okay?

13 **MR. MANCILLA:** Your Honor --

14 **THE COURT:** You want to accelerate it?

15 **MR. MANCILLA:** -- we would ask for an accelerated.
16 My client's been waiting to be sentenced, to close this case
17 out. He wants to move on with his life.

18 I think that, you know, if it weren't for the Court's
19 interest in doing further research -- we had brought these
20 cases to the Government's attention back in October, to explain
21 to them why he deserved, you know, a different type of
22 Plea Agreement.

23 As you probably noticed, some of the defendants -- some of
24 the cases that we've cited -- the Government chose not to
25 pursue the aggravated identity theft, which is a consecutive 24

1 months on top of everything. And instead they would agree to,
2 say, two months beyond the Guideline Range, which would account
3 for the additional privacy interests that were violated by
4 these defendants who targeted, very much so, just like this
5 case -- or according to them, just like this case -- their
6 victims.

7 The *Seleznev* case is completely inapplicable. It is
8 \$170 million known loss.

9 The case here, the Government has been unable to prove any
10 actual loss.

11 **THE COURT:** Okay. Well, I'm happy to accelerate the
12 process --

13 **MR. MANCILLA:** Yeah.

14 **THE COURT:** -- to have a shorter continuance of the
15 sentencing hearing, but since your client is in custody --

16 **MR. MANCILLA:** Okay.

17 **THE COURT:** I mean, he's going to be in custody,
18 regardless, because --

19 **MR. MANCILLA:** Unless Your Honor wants to give him
20 time served.

21 **THE COURT:** Even the sentence that you've requested
22 is --

23 And I can't give him time served, just so you know.

24 So, you know, it's just a question of where he will be in
25 custody. Right?

1 **MR. MANCILLA:** Is it limited to Tuesdays, Judge?

2 **THE COURT:** Yes.

3 **MR. MANCILLA:** Okay.

4 **THE COURT:** But I'm happy to have a more accelerated
5 schedule.

6 **MR. MANCILLA:** Could we do the 29th? And based our
7 briefing schedule, based off of that?

8 **THE COURT:** 29th of?

9 **MR. FANTONE:** Of May.

10 **MR. MANCILLA:** Of May. Sorry.

11 **THE COURT:** Sure.

12 **MR. FANTONE:** Is it okay if I double check the date
13 with Mr. Baratov's parents?

14 **THE COURT:** Sure. Yeah. Not a problem. Take your
15 time.

16 **MR. FANTONE:** Thank you.

17 **MR. MANCILLA:** One moment.

18 Would Your Honor be amenable to June 5th?

19 **THE COURT:** I think I'm not here that week.

20 **MR. MANCILLA:** Okay. So I guess we'll see about the
21 29th.

22 **THE COURT:** We can do the week after, June 5th, if
23 you prefer. I mean, if you want to check with his parents --

24 **MR. FANTONE:** The parents are good with May 29.

25 **MR. MANCILLA:** We'll do May 29th, Judge.

1 **THE COURT:** Okay. May 29th.

2 And so why don't we say, then, that the Defendant's
3 Supplemental Sentencing Memorandum is due 14 days prior to the
4 hearing; and the Government's Supplemental Sentencing
5 Memorandum is due -- I was going to say 21 days prior to the
6 hearing, but that's, like, really soon. Right?

7 **MR. MANCILLA:** Again, they've had these cases since
8 October. I think they can have a quick turnaround time.

9 **THE COURT:** Again, the Government's supplemental
10 memorandum will be due 21 days prior to the hearing. And I'll
11 just ask Probation to circle back with me on this as soon as
12 you can.

13 **MS. LIBBY:** Yes, Your Honor.

14 **MR. MANCILLA:** Thank you, Judge.

15 **MR. FANTONE:** Thank you, Judge.

16 **THE COURT:** All right. Thank you.

17 **MR. MC CULLOCH:** Thank you.

18 (At 11:27 a.m. the proceedings were adjourned.)

19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21

22 

23 _____ April 25, 2018

24 Signature of Court Reporter/Transcriber Date

25 Lydia Zinn